

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ROBERT MITCHELL,

Plaintiff,

v.

NURSE DIAZON, et al.,

Defendants.

CASE NO. C10-2075RAJ-BAT

ORDER

This matter comes before the court on Plaintiff Robert Mitchell's objections (Dkt. # 14) to the Report and Recommendation ("R&R") (Dkt. # 13) of the Honorable Brian A. Tsuchida, Magistrate Judge. Judge Tsuchida examined each of the four claims Mr. Mitchell asserted in his amended complaint (Dkt. # 12) and recommended the dismissal of three of them. As to the fourth claim, a claim that Defendant Diazon, a nurse, denied him proper medical treatment, the R&R recommends that the court authorize service of Defendant Diazon. For the reasons stated below, the court ADOPTS the R&R and DENIES Mr. Mitchell's objections.

Even as it recommends the dismissal of certain claims, the R&R invites Mr. Mitchell to file an amended complaint that cures any defects. Mr. Mitchell did not submit an amended complaint. He contends that he was unable to do so because he did not have access to copies of his original complaint and his first amended complaint. Mr.

1 Mitchell does not explain why he needed his previous pleadings to fix the defects that  
2 that R&R clearly identifies.

3 The R&R correctly notes that Mr. Mitchell fails to identify any defendant  
4 responsible for the conduct described in two of his claims. Those claims describe jail  
5 units that are “too cold” and have “inadequate kites,” a lack of “working outlets in his  
6 cell,” and a library book selection that contains “only Christian books.” Without any  
7 explanation of who is responsible for these allegedly unconstitutional conditions, Mr.  
8 Mitchell does not state a claim.

9 Mr. Mitchell’s first claim contends that Defendant David Oster “improperly  
10 classified” him when he entered a new correctional facility in April 2010. It also  
11 contends that Defendant Oster improperly denied him law library access. The R&R  
12 recommends dismissing this claim for two reasons. First, inmates have no constitutional  
13 right to a particular classification status. Second, an inmate complaining about access to  
14 a prison’s law library must show prejudice arising from the inability to meet obligations  
15 in pending or planned legal cases. Mr. Mitchell failed to do so.

16 The court agrees with the first conclusion. In his objections, Mr. Mitchell states  
17 that he does not object to his classification by itself, but rather contends that Mr. Oster  
18 assigned a particular classification status as “Punishment for [Mr. Mitchell’s] Legal  
19 Actions.” This could be construed as a claim of unlawful retaliation, but it is inherently  
20 implausible. Mr. Oster made the allegedly improper classification when Mr. Mitchell  
21 arrived at the facility in April 2010. At that time, there is no evidence that there was any  
22 legal action pending that would have impacted Mr. Oster in any way. The court thus  
23 finds no claim based on any alleged retaliatory activity.

24 The court also agrees with the second conclusion. Mr. Mitchell, who has filed  
25 numerous actions in the federal courts, has an obligation to explain what prejudice he  
26 suffered as a result of being denied law library access. At the time Mr. Oster issued his  
27 letter denying him access in April 2010, Mr. Oster issued a letter that correctly stated that

1 Mr. Mitchell had no pending obligations in a case then pending in the Ninth Circuit (No.  
2 09-35877). The court has reviewed the docket in that case, and it shows that the principal  
3 briefs from Mr. Mitchell and his opponents had already been received. Mr. Mitchell later  
4 made a host of improper filings, all of which the court of appeals rejected. The record  
5 thus reveals that Mr. Mitchell was able to make court filings despite the alleged denial of  
6 law library access. It also reveals that Mr. Oster correctly determined that Mr. Mitchell  
7 had no pending obligations in that case in April 2011.

8 Mr. Mitchell now makes a host of new allegations about the denial of law library  
9 access. First, there is no allegation that Mr. Oster is responsible for these alleged denials  
10 of access. Second, Mr. Mitchell again fails to identify any prejudice to him. Third, the  
11 denial notices explain that Mr. Mitchell needs to submit requests for library access in  
12 advance, because of limited availability. There is no allegation that this condition is  
13 improper.

14 The court accordingly ADOPTS the R&R over Mr. Mitchell's objections. The  
15 court directs Judge Tsuchida to arrange service upon Defendant Diazon. The court  
16 makes no ruling on whether Mr. Mitchell should be permitted to file an amended  
17 complaint to address the deficiencies identified in the R&R and in this order. It instead  
18 orders that if Mr. Mitchell wishes to file such an amended complaint, he shall do so  
19 promptly. Judge Tsuchida may decide whether to accept the amended complaint.

20 The court directs the clerk to send a copy of this order to Mr. Mitchell and Judge  
21 Tsuchida. The court also directs the clerk to include with Mr. Mitchell's mailing a copy  
22 of Mr. Mitchell's amended complaint (Dkt. # 12).

23 Dated this 10th day of August, 2011.

24  
25 

26 The Honorable Richard A. Jones  
27 United States District Court Judge